

### **REMARKS**

This amendment is in response to the Office Action mailed July 7, 2006. Claims 1, 13, and 25 are amended, and Claims 7 and 19 are cancelled with the entry of this amendment. Claims 1-29 are presently pending, and with the entry of this amendment, Claims 1-6, 8-18 and 20-29 will be pending. The specification has been amended to correct various typographical and grammatical errors. No new matter has been added by these amendments.

### **§103 Rejection**

Claims 1-6, 8, 9, 13-18, 20, 21, and 25-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,260,072 to Rodriguez-Moral ("Rodriguez-Moral") in view of U.S. Patent No. 7,027,393 to Cheriton ("Cheriton").

Regarding Claim 1, Applicants respectfully hold that Rodriguez-Moral does not disclose classifying an incoming packet into a plurality of flows or using the cost scaling factors for scaling and normalizing flow load estimates. Applicants agree that Rodriguez-Moral does not disclose implementing a drop policy for at least one flow when the estimate exceeds a predicted threshold. Rather with respect to classifying incoming packets, Rodriguez-Moral specifically divides the packets into two types, based on the type of service desired. "Therefore, incoming packets to the network are divided into two types: (1) delay-sensitive packets and (2) non-delay-sensitive packets." (see Rodriguez-Moral, col. 4, ln 37-40). Applicants claim classifying packets into a *plurality* of flows, where the number of flow types is indeterminate. Examples of flow types are control flows, file server flows, internal flows, external flows, encrypted flows, or the like (see Specification, pg 4-5, paragraph 10 & 12). Given that Rodriguez-Moral uses such a binary packet division that accomplishes the goals of the two different path options, there is no suggestion or motivation in Rodriguez-Moral to expand this division to the packet classification level. Further, Cheriton does not teach or suggest classifying packets at all. Accordingly, even before the amendment Claim 1 is in condition for allowance.

With respect to using costs, Rodriguez-Moral does not use the cost scaling factors for scaling and normalizing flow load estimates. The costs in Rodriguez-Moral are determined based on a variety of characteristics such as physical transit time, processing delays, monetary factors, time delays, data flow rate, etc. (see Rodriguez-Moral, col. 4, ln 53-61). "Further, costs are assigned to links" (see Rodriguez-Moral, col. 4, ln 62) and "[t]hese costs are used to compute the routing tables ... the algorithm computes the shortest path from that node to every other node in the network ... "shortest" means smallest cost" (see Rodriguez-Moral, col. 7, ln 8-14). The claimed costs are normalization factors directly relating to the flow loads themselves. The claimed costs of this application are distinct and non-obvious from the costs of Rodriguez-Moral. Therefore, there is no suggestion or motivation in Rodriguez-Moral to use the claimed cost normalization factors to normalize the capacity of the flow loads. Further, Cheriton does not teach or suggest costs at all. Accordingly, claims 1 is in condition for allowance.

Additionally, since independent claims 13 and 25 are amended in a manner substantially similar to amended Claim 1, albeit differently, they are also allowable for at least the same reasons. Further, dependent claims 2-6, 8-12, 14-18, 20-24 and 26-29 are allowable for at least the same reasons as amended independent claims 1, 13, and 25 upon which they respectively depend.

#### **Allowable Subject Matter**

Applicants gratefully acknowledge the Examiner's indication that Claims 7, 10-12, 19, and 22-24 contain allowable subject matter and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Consequently, independent Claims 1, 13, and 25 have been amended to include the subject matter taught by Claims 7 and 19, which are cancelled herein. Furthermore, amended Claims 1, 13 and 25 are now in condition for allowance for at least this reason.

**CONCLUSION**

By the foregoing explanations, Applicants believe that this response has addressed fully all of the concerns expressed in the Final Office Action, and believes that it has placed each of the pending claims in condition for immediate allowance. Should any further aspects of the application remain unresolved, the Examiner is invited to telephone Applicants' attorney at the number listed below.

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Respectfully submitted,

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